

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ESTHER GARCIA,	)	Case No.: 1:23-cv-1593 JLT BAM
)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS, DENYING
v.	)	PLAINTIFF'S MOTION FOR SUMMARY
	)	JUDGMENT, GRANTING DEFENDANT'S
LELAND DUDEK,	)	REQUEST TO AFFIRM THE
Acting Commissioner of Social Security ¹,	)	ADMINISTRATIVE DECISION, AND
	)	DIRECTING ENTRY OF JUDGMENT IN
Defendant.	)	FAVOR OF DEFENDANT
)	
	)	(Docs. 14, 18, and 20)

Esther Garcia seeks judicial review of a final decision denying her application for disability insurance benefits under Title II of the Social Security Act. (Docs. 1, 14.) Plaintiff asserts the decision is not supported by substantial evidence because the ALJ erred in evaluating her mental impairments and the medical opinion of her primary care provider. (*See generally* Doc. 14.) Plaintiff requests the matter be remanded for further administrative proceedings. (*Id.* at 7, 10.) The Commissioner asserts substantial evidence supports the ALJ's findings. (Doc. 18 at 4-13.) For the reasons set forth below, Plaintiff's appeal is denied and Commissioner's request to affirm the administrative decision is granted.

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¹ Leland Dudek became the Acting Commissioner of Social Security in February 2025. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Leland Dudek is substituted as the defendant in this suit.

1 **I. Decision of the ALJ**

2 The ALJ evaluated Plaintiff's application using the five-step sequential evaluation set forth in
 3 20 C.F.R. § 404.1520. (Doc. 11-2 at 24-36.) First, the ALJ determined Plaintiff did not engage in
 4 substantial gainful activity after her alleged onset date of May 9, 2018. (*Id.* at 24.) Second, the ALJ
 5 found Plaintiff's severe impairments included: "coronary artery disease, status post pacemaker implant;
 6 degenerative disc disease of the lumbar spine; tarlov's cyst; degenerative joint disease of the left
 7 shoulder; trigger finger; diabetes mellitus with peripheral neuropathy in the bilateral hands and feet;
 8 bilateral hearing loss due to tinnitus; and obesity." (*Id.* at 24-25.) The ALJ noted Plaintiff "reported
 9 mental health symptoms such as memory loss, anxiousness, and depression," but found Plaintiff's
 10 mental impairments were "nonsevere" because they "cause[d] no more than 'mild limitation in any of
 11 the functional areas and the evidence does not otherwise indicate there is more than a minimal
 12 limitation in the claimant's ability to do basic work activities." (*Id.* at 27, emphasis in original.)

13 At step three, the ALJ determined Plaintiff's impairments did not meet or medically equal a
 14 Listing. (Doc. 11-2 at 28-29.) Next, the ALJ found:

15 [T]he claimant has the residual functional capacity to perform sedentary
 16 work as defined in 20 CFR 404.1567(a) except that she can lift and/or carry
 17 10 pounds occasionally and less than 10 pounds frequently. She can sit for
 18 six of eight hours, and can stand and/or walk for two of eight hours. The
 19 claimant can occasionally climb ramps and stairs and can never climb
 20 ladders, ropes and scaffolds. She can occasionally balance, stoop, kneel,
 21 crouch, and crawl. The claimant must have a sit/stand option approximately
 three times per hour and will be off task less than 5% of the time. The
 claimant can occasionally reach overhead with the left upper extremity, and
 can frequently handle and finger bilaterally. She can tolerate moderate noise
 and must avoid loud background noise. The claimant can never work around
 unprotected heights or dangerous machines. She can perform detailed but
 not complex tasks.

22 (*Id.* at 29.) With this residual functional capacity, the ALJ determined at step four that Plaintiff was
 23 "capable of performing past relevant work as an Admit Clerk as generally performed" in the national
 24 economy. (*Id.* at 35.) Therefore, the ALJ concluded Plaintiff was not disabled. (*Id.* at 36.)

25 **II. Issues Raised by Plaintiff**

26 Plaintiff asserts, "The ALJ's decision is unsupported by substantial evidence as he failed to
 27 find Plaintiff's mental impairment severe at Step 2 and did not include any limitations in the RFC
 28 reflective of Plaintiff's limitations related to her impairment." (Doc. 14 at 6 [emphasis omitted]; *see*

1 *also id.* at 6-7.) In addition, Plaintiff contends that “[t]he RFC determination is unsupported by
 2 substantial evidence as he failed properly evaluate the medical opinions” from her primary care
 3 provider, Dr. Morasca, “in accordance with the prevailing rules and regulations.” (*Id.* at 7 [emphasis
 4 omitted]; *see also id.* at 7-10.) Thus, Plaintiff contends remand is appropriate. (*Id.* at 7, 10.)

5 **III. Findings and Recommendations of the Magistrate Judge**

6 The magistrate judge found Plaintiff’s arguments regarding her mental impairments were not
 7 persuasive. (Doc. 20 at 6.) The magistrate judge noted Plaintiff ignored the ALJ’s determination that
 8 her “own testimony lacked any indication” that she was currently taking medication for her mental
 9 impairment, despite receiving prescriptions for such, and there was “little evidence of formal mental
 10 health treatment.” (*Id.*) In addition, the magistrate judge observed the evidence the ALJ cited “showed
 11 that Plaintiff ‘denied or was negative for any mental health symptoms on more than one occasion.’”
 12 (*Id.*, citing AR 21 [Doc. 11-2 at 26].) Although Plaintiff relied upon the limitations identified by Dr.
 13 Michael Musacco to show the severity of her mental impairments, the magistrate judge found Plaintiff
 14 “appears to ignore the ALJ’s finding that Dr. Musacco’s opinion was not persuasive,” and did not
 15 challenge the ALJ’s analysis regarding this opinion. (*Id.* at 7; *see also id.* at 6-8.) The magistrate judge
 16 found substantial evidence supported the step two determination, including opinions from several other
 17 physicians, which Plaintiff did not challenge. (*Id.* at 8-10.) The magistrate judge also determined any
 18 error at step two was “harmless because the ALJ considered the effects of Plaintiff’s mental
 19 impairments at subsequent steps of the sequential evaluation.” (*Id.* at 10.)

20 The magistrate judge found the ALJ properly considered the medical opinion from Plaintiff’s
 21 primary care physician, Dr. Gary Morasca, who opined Plaintiff had occasional manipulative
 22 limitations and additional physical restrictions. (Doc. 20 at 11-15.) The magistrate judge observed,
 23 “The ALJ found that those limitations were neither supported nor consistent with the record.” (*Id.* at
 24 13.) The magistrate judge found the ALJ’s analysis regarding the supportability of the opinion was
 25 correct, because Dr. Morasca did not offer any “narrative explanation” and his “own treatment notes ...
 26 were not supportive of [the] manipulative limitations.” (*Id.* at 14.) Similarly, the magistrate judge
 27 determined the ALJ properly considered the consistency factor by addressing the medical evidence,
 28 Plaintiff’s own allegations, and her work history. (*Id.* at 14-15.)

1 The magistrate judge concluded “the ALJ’s decision is supported by substantial evidence in the
2 record as a whole and is based on proper legal standards.” (Doc. 20 at 15.) Therefore, the magistrate
3 judge recommended the Court deny Plaintiff’s motion for summary judgment or remand, grant the
4 request to affirm the agency’s determination, and enter judgment in favor of the Commissioner. (*Id.*)

5 **IV. Objections and Response**

6 Plaintiff contends the findings of the magistrate judge related to step two “should be rejected.”
7 (Doc. 21 at 1 [emphasis omitted].) Plaintiff contends the magistrate judge erred in concluding that “the
8 ALJ correctly assessed Dr. Gurshani’s opinion, but her interpretation of the opinion is undermined by
9 prevailing precedent.” (*Id.* at 2.) According to Plaintiff, the magistrate judge engaged in “cherry
10 picking” in reviewing the record, and “mainly summarize[d] the ALJ’s decision and cites to only a few
11 examples of benign findings to scrounge support for the ALJ’s bald statements.” (*Id.*) Plaintiff also
12 argues the magistrate judge did not “properly assess Plaintiff’s arguments.” (*Id.*) Plaintiff asserts she
13 “had addressed that Step 2 is a *de minimis* standard and that as Dr. Musacco had noted that Plaintiff
14 was limited to simple, routine tasks, this would result in more restrictive limitations than those listed by
15 the ALJ.” (*Id.*) Plaintiff contends “[t]he magistrate judge improperly focused on the step 2 error rather
16 than Plaintiff’s notations that she should have been limited to simple, routine tasks had the ALJ
17 properly considered her mental impairment.” (*Id.*, emphasis omitted.)

18 Plaintiff also asserts the Court should reject the magistrate judge’s findings related to the
19 medical opinion evidence. (Doc. 21 at 2-3.) Plaintiff indicates: “The Magistrate Judge found that the
20 ALJ properly found that Plaintiff’s subjective complaints were not supported. Dkt. No. 20 at 11-15.
21 However, the Magistrate Judge’s recommendation is again contraindicated (sic) by prevailing legal
22 precedent and should be rejected.” (*Id.* at 2.) She also argues the magistrate judge engaged in “cherry
23 picking” in addressing the medical record, because “the magistrate judge’s decision contained a far
24 more in-depth description of the evidence than that contained in the ALJ’s decision.” (*Id.* at 3.)

25 The Commissioner filed a response to the objections, asserting the Court should adopt the
26 Findings and Recommendations. (Doc. 22 at 2.) The Commissioner observes that contrary to
27 Plaintiff’s argument regarding the analysis, “there is no opinion by a Dr. Gurshani in the record, and
28 neither the Magistrate Judge nor the ALJ addressed such an opinion.” (*Id.* at 3.) Similarly, the

Commissioner notes that Plaintiff did not challenge the ALJ’s findings regarding her subjective symptoms, and the magistrate judge did not address such an issue. (*Id.* at 5.) In addition, the Commissioner notes Plaintiff did not identify any examples of “cherry picking” by the magistrate judge. (*Id.* at 3, 4.) The Commissioner also observes that the magistrate judge found Plaintiff ignored the ALJ’s determination that “Dr. Musacco’s opinion was not persuasive,” and waived any challenge to the ALJ’s conclusions that the prior administrative medical findings.” (*Id.* at 4.) Finally, the Commissioner argues “a plain reading of the Recommendations belies [the] contention” that the magistrate judge engaged in an improper review of the evidence. (*Id.* at 5.) Thus, the Commissioner asserts the Court should affirm the final decision. (*Id.*)

V. Discussion

A district judge may “accept, reject or modify, in whole or in part, the findings and recommendations...” 28 U.S.C. § 636(b)(1). If a party files objections, “the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendations to which objection is made.” *Id.* A de novo review requires the Court to “consider[] the matter anew, as if no decision had been rendered.” *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009).

A. Arguments not raised before the Court

As an initial matter, as the Commissioner asserts, there is not an opinion from Dr. Gurshani in this matter. Similarly, Plaintiff did not make any arguments before the magistrate judge regarding her subjective complaints. (*See generally* Doc. 14.) Consequently, the objections asserting error related to the opinion from Dr. Gurshani and Plaintiff’s subjective statements are disregarded.

B. Step two determination

The inquiry at step two is *a de minimus* screening for severe impairments “to dispose of groundless claims.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (citing *Bowen v. Yuckert*, 482 U.S. 137, 153-54 (1987)). The purpose is to identify claimants whose medical impairment makes it unlikely they would be disabled even if age, education, and experience are considered. *Bowen*, 482 U.S. at 153. At step two, a claimant must make a “threshold showing” that (1) she has a medically determinable impairment or combination of impairments and (2) the impairment or combination of impairments is severe. *Id.* at 146-47; *see also* 20 C.F.R. § 404.1520(c). For an impairment to be

1 “severe,” it must significantly limit the claimant’s physical or mental ability to do basic work activities,
2 or the “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. § 404.1520(c).

3 Plaintiff asserts the ALJ erred in finding her mental impairments were not severe at step two,
4 because “not only was Plaintiff prescribed medications, but a medical professional opined that she had
5 functional limitations.” (Doc. 14 at 7.) Specifically, Plaintiff notes that “Dr. Musacco opined that
6 Plaintiff was limited to simple, repetitive tasks.” (*Id.*, citing AR 599 [Doc. 11-2 at 604].) Plaintiff
7 contends the error was harmful because “[t]he limitation to simple, repetitive tasks would result in the
8 finding that Plaintiff is unable to perform her past relevant work as an Admit Clerk, given that simple,
9 routine tasks are inconsistent with SVP 4 level work.” (*Id.*)

10 Significantly, as the magistrate judge observed, Plaintiff did not challenge the ALJ’s
11 determination that the opinion of Dr. Musacco was “not persuasive.” (Doc. 11-2 at 27.) In so finding,
12 the ALJ considered the supportability and consistency of the opinion with other evidence in the record.
13 (*Id.*) Because Plaintiff did not challenge these findings, any challenge as to the ALJ’s rejection of the
14 limitations identified by Dr. Musacco was waived. *See Carmickle v. Comm’r, SSA*, 533 F.3d 1155,
15 1161 n.2 (9th Cir. 2008) (declining to address an ALJ’s finding where the plaintiff “failed to argue [the]
16 issue with any specificity in his briefing”). Thus, Plaintiff’s reliance upon the rejected opinion—both
17 to show error by the ALJ at step two and in determining the RFC—is misplaced. *See, e.g., Smith v.*
18 *Colvin*, 2015 WL 9023486, at *9 (N.D. Cal. Dec. 16, 2015) (“the ALJ was not required to include
19 properly rejected evidence” in the RFC).

20 The ALJ considered the medical and testimonial evidence related to Plaintiff’s mental
21 impairments, and found Plaintiff had no more than mild limitations in the four functional areas
22 identified in the “Paragraph B” criteria, as set forth in 20 C.F.R., Pt. 404, Subpart P, App. 1 to evaluate
23 the mental impairments of a claimant. (Doc. 11-2 at 26-28.) For example, the ALJ found Plaintiff
24 “routinely denied or was negative for any mental health symptoms on more than one occasion.” (*Id.* at
25 26, citing Exh. 12F/4 [Doc. 11-2 at 645], 13F/7 [Doc. 11-2 at 660], 24F/8 [Doc. 11-2 at 884].) The
26 ALJ also considered Plaintiff’s testimony concerning her medications, noting there was no “indication
27 that she is currently taking any psychotropic medications.” (*Id.* at 26.) The ALJ also found “little
28 evidence of any subsequent formal mental health treatment such as therapy or other modalities.” (*Id.*)

1 The lack of treatment is a proper consideration by the ALJ in evaluating the severity of a plaintiff's
 2 impairments. *See Ivy v. Comm'r of Soc. Sec.*, 2011 WL 2038579, at *10 (E.D. Cal. May 24, 2011)
 3 (finding the ALJ's conclusion that the claimant's depression was not severe at step two was supported
 4 by the record where the plaintiff did not receive "mental health treatment, nor did he consistently take
 5 medications for any psychiatric condition"). Finally, the ALJ considered medical opinions from
 6 several other physicians who reviewed the record and found Plaintiff had "a mild limitation in
 7 understanding, remembering, or applying information; a mild limitation in interacting with others; a
 8 mild limitation in concentrating, persisting, or maintaining pace; and no limitation in adapting or
 9 managing oneself." (*Id.* at 26; *see also id.* at 26-27, citing Exh. 1A [Doc. 11-2 at 133-148]; 15F [Doc.
 10 11-2 at 677-687].) Consequently, substantial evidence supports the ALJ's determination at step two
 11 that Plaintiff's mental impairments were "nonsevere."

12 To the extent Plaintiff contends the magistrate judge engaged in "cherry picking" in her
 13 discussion (*see* Doc. 21 at 2), the objection is plainly unavailing. Indeed, Plaintiff does not identify any
 14 specific evidence she believes the magistrate judge erroneously considered. (*See id.*) The Court
 15 declines to speculate as to what evidence Plaintiff believes was "cherry picked" by the magistrate
 16 judge. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929-30 (9th Cir. 2003) (observing the
 17 Ninth Circuit "has repeatedly admonished" that the court "cannot manufacture arguments" for parties);
 18 *see also* Fed. R. Civ. P. 72(b)(2) (requiring any objections to magistrate judge's findings and
 19 recommendations to be "specific"). Although Plaintiff contends the evidence concerning her mental
 20 health may be interpreted differently, "[w]hen the evidence before the ALJ is subject to more than one
 21 rational interpretation, [the court] must defer to the ALJ's conclusion." *Batson v. Comm'r of Soc. Sec.*
 22 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).

23 **C. Evaluation of a medical opinion**

24 The regulations direct the ALJ to determine how persuasive a medical opinion is according to
 25 the following factors: supportability, consistency, relationship with the claimant, specialization, and
 26 other factors showing the medical source's "familiarity with ... other evidence in the record or an
 27 understanding of [the] disability program's policies and evidentiary requirements." 20 C.F.R. §
 28 404.1520c(c)(1)-(5). An ALJ is only required to discuss supportability and consistency, which are the

1 most important factors “when evaluating the persuasiveness of medical opinions.” *Woods v. Kijakazi*,
 2 32 F.4th 785, 791 (9th Cir. 2022) (quoting 20 C.F.R. § 404.1520c(a)); *see also* 20 C.F.R. §
 3 404.1520c(b)(2) (“we will explain how we considered the supportability and consistency factors for a
 4 medical source’s medical opinions or prior administrative medical findings in your determination or
 5 decision. We may, but are not required to, explain how we considered the [remaining] factors in
 6 paragraphs (c)(3) through (c)(5) of this section...”).

7 The supportability inquiry is an assessment of “the extent to which a medical source supports
 8 the medical opinion by explaining the relevant objective medical evidence.” *Woods*, 32 F.4th at 791-
 9 792 (internal quotation marks omitted). The regulations provide: “The more relevant the objective
 10 medical evidence and supporting explanations presented by a medical source are to support his or her
 11 medical opinion(s) or prior administrative medical finding(s), the more persuasive the medical opinions
 12 or prior administrative medical finding(s) will be.” 20 C.F.R. § 404.1520c(c)(1). On the other hand,
 13 consistency compares an opinion with other evidence in the record to determine its persuasiveness. *See*
 14 *Woods*, 32 F.4th at 792. With the consistency factor, the regulations explain: “The more consistent a
 15 medical opinion(s) or prior administrative medical finding(s) is with the evidence from other medical
 16 sources and nonmedical sources in the claim, the more persuasive the medical opinion(s) or prior
 17 administrative medical finding(s) will be.” 20 C.F.R. § 404.1520c(c)(2). The Ninth Circuit observed
 18 that an ALJ must explain how both the supportability and consistency factors were considered, and
 19 “[e]ven under the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as
 20 unsupported or inconsistent without providing an explanation supported by substantial evidence.”
 21 *Woods*, 32 F.4th at 792.

22 Plaintiff notes that Dr. Morasca, her primary care provider, opined she was “limited to a less
 23 than sedentary range of work and could only perform manipulative actions occasionally.” (Doc. 14 at
 24 8, citing AR 614-19 [Doc. 11-2 at 619-624].) The ALJ considered the opinion of Dr. Morasca, and
 25 concluded it was “not persuasive.” (Doc. 11-2 at 33-34.) In so doing, the ALJ considered the
 26 supportability of the opinion, finding “no narrative explanation to provide a nexus between the
 27 claimant’s impairments and the overly restrictive functional limitations identified.” (Doc. 11-2 at 33.)
 28 For example, the ALJ found there was nothing to explain why Plaintiff’s trigger finger diagnosis

1 resulted in “occasional manipulative restrictions.” (*Id.*, citing Exh. 9F/4. [Doc. 11-2 at 631].) Although
 2 Plaintiff contends “the ALJ did not cite to any records that indicated Plaintiff was less limited than Dr.
 3 Morasca opined” (Doc. 14 at 9), the assertion is contradicted by the record. The ALJ indicated he
 4 reviewed the treatment notes and found that they “do not support the conclusory assessments.” (*Id.*,
 5 citing Exhs. 10F, 13F [Doc. 11-2 at 629-40, 655-66].) Because the ALJ found Dr. Morasca did not
 6 provide a nexus between Plaintiff’s impairments to the physical limitations identified—or otherwise
 7 link the diagnoses to the limitations identified—the ALJ properly considered the supportability of the
 8 opinion. *See Woods*, 32 F.4th at 791-792; *see also Cuevas v. Comm’r of Soc. Sec.*, 2021 WL 363682 at
 9 *10 (S.D.N.Y. Jan. 29, 2021) (the supportability inquiry is “geared toward assessing how well a
 10 medical source supported and explained” the opinion). As the Ninth Circuit previously explained, an
 11 ALJ “need not accept the opinion of any physician ... if that opinion is brief, conclusory, and
 12 inadequately supported by clinical findings.” *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

13 Further, the ALJ considered the consistency of the opinion “with the longitudinal record.”
 14 (Doc. 11-2 at 33-34.) For example, the ALJ found the manipulative restrictions identified were “not
 15 consistent” with objective findings, including Plaintiff’s “4+/5- out of 5 grip strength in her hands and
 16 little other evidence of ongoing deficits.” (*Id.* at 33.) The ALJ also found “the restrictions with respect
 17 to operation of foot controls are not supported, particularly given evidence of the 90% improvement
 18 with treatment for her nonsevere plantar fasciitis as well as observations of normal gait with the ability
 19 to stand on heels and toes.” (*Id.* at 33-34.) Further, the ALJ found the identified restrictions related to
 20 cardiac impairments were “not consistent with evidence of [Plaintiff’s] treating history.” (*Id.* at 34.)
 21 Finally, the ALJ found Dr. Morasca’s opinion that the “limitations have been present since 2009” was
 22 “not consistent with the claimant’s own allegations and her work history.” (*Id.*) The identified
 23 evidence supports the ALJ’s analysis and finding that the opinion of Dr. Morasca was not persuasive.
 24 *See, e.g., Darling v. Kijakazi*, 2023 WL 4103935, at *1 (9th Cir. June 21, 2023) (finding an ALJ
 25 permissibly considered a claimant’s work activity in addressing the consistency factor); *Ferreira v.*
 26 *Kijakazi*, 2023 WL 2815735, at *4 (E.D. Cal. Apr. 5, 2023) (a finding that “opined limitations were not
 27 consistent with the treatment record... expressly invokes the consistency factor”); *Bruno v. Comm’r of*
 28 *Soc. Sec.*, 2021 WL 649477, at *8 (N.D. Oh. Dec. 3, 2021) (finding an “ALJ applied the proper legal

standards” with the consistency factor by finding manipulative and other physical restrictions identified were not consistent with the objective findings that the claimant had “4/5 grip strength... and a normal gait”). Accordingly, the ALJ properly considered the supportability and consistency factors in evaluating the opinion of Dr. Morasca.

VI. Conclusion and Order

According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case. Having carefully reviewed the entire matter—including Plaintiff’s objections and Defendant’s response—the Court concludes the Findings and Recommendations are supported by the record and proper analysis. The administrative decision must be affirmed because the ALJ applied the proper legal stands, and substantial evidence supports the findings. *See Sanchez v. Sec’y of Health & Human Serv.*, 812 F.2d 509, 510 (9th Cir. 1987). Thus, the Court **ORDERS**:

1. The Findings and Recommendations (Doc. 20) are **ADOPTED**.
2. Plaintiff’s motion for summary judgment and appeal (Doc. 14) is **DENIED**.
3. Defendant’s request to affirm the administrative decision (Doc. 18) is **GRANTED**.
4. The Clerk of Court is directed to terminate any pending motions; enter judgment in favor of defendant Leland Dudek, Acting Commissioner of Social Security, and against Plaintiff Esther Garcia; and to close this case.

IT IS SO ORDERED.

Dated: **March 17, 2025**


UNITED STATES DISTRICT JUDGE